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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/931,711	08/16/2001	Donald A. Brown	1218.0006	3421

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Roger D. Emerson
One Cascade Plaza
Fourteenth Floor
Akron, OH 44308

EXAMINER
GROSZ, ALEXANDER

ART UNIT	PAPER NUMBER
3673	

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Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 09/931,711	Applicant(s) BROWN
	Examiner GROSZ	Art Unit 3673

-- The MAILING DATE of this c mmunication appears on th cover she t with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE THREE MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on 12/11/03

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) 1-28 is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) 1,2,7-16,21-28 is/are rejected.

7)☒ Claim(s) 3-6,17-20 is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11)☒ The proposed drawing correction filed on 12/11/03 is: a)☒ approved b)☐ disapproved by the Examiner.

If approved, corrected drawings are required in reply to this Office action.

12)☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

13)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____ .

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

14)☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).

a) ☐ The translation of the foreign language provisional application has been received.

15)☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 2, 3 .
4) ☐ Interview Summary (PTO-413) Paper No(s). _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other:

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970);and, *In re Thorington,* 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 1-28 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 1 of U.S. Patent No. 6,276,007. Although the conflicting claims are not identical, they are not patentably distinct from each other because the pending claims are merely broader versions of the patented claim.

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 2, 10, 11, 15, 16, 24, 25 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Gardner et al.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and

the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 7, 8, 9, 21, 22, 23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gardner et al teaching applicant's basic substantially linear lifting aid, but not the single piece polymeric pad-neck, and the ringlike gripping surface, in view of Smith (U.K 874,724) teaching the use of the above (note grooves 16, fig. 3) with a lift aid.

It would have been obvious to one ordinarily skilled in the art at the time the invention was made to have provided Gardner et al's cane or crutch with a ringlike grooved, single piece polymeric pad-neck, because Smith recognizes the desirability of doing so, in order to improve gripping capability. It is noted that ringlike grooves or conventional with bathtub mats.

Claims 12, 26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gardner et al, teaching applicant's basic device, but not the use of a "Y" reinforcement, in view of Booth (note fig. 6) teaching the reinforcing of a patient aid.

It would have been obvious to one ordinarily skilled in the art at the time the invention was made to have reinforced Gardner et al's device, because Booth recognizes the desirability of doing so, in order to improve structural strength.

A "Y" shaped reinforcement is considered a mechanical expedient, in view of well known structural engineering principles.

Claims 13, 27 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gardner et al, teaching applicant's basic device, but not the use of a strap, in view of Mehlich (DE 29908393 U1) teaching the use of a strap with a patient aid.

It would have been obvious to one ordinarily skilled in the art at the time the invention was made to have used a strap with Gardner et al's device, because Mehlich recognizes the desirability of using straps, with a similar device, in order to avoid losing or dropping the device.

Claims 14, 28 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gardner et al, teaching applicant's basic device but not its "adjustability" in view of Semanchick et al (note fig. 3) or Warry (U.K. 141,590) (note page 1, lines 6-11).

It would have been obvious to one ordinarily skilled in the art at the time the invention was made to have made Gardner et al's device in an adjustable form, because Semanchick et al and Warry recognize the desirability of such an adjustability in order to "customize" the devices.

Claims 3-6; 17-20 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

While O'Brien et al (U.S. 5,586,352) teaches the use of the vertically adjustable handle 30, (in figure 6c) with a patient aid, the above identified claims, which are substantially broader than the claim allowed in the parent application, are considered allowable because there is no teaching or suggestion in the prior art to combine a slidable hand grip with Gardner et al's device.

Su and Wilkinson (both of record) and Willis (note fig. 1, 5) and Frank (note figs. 1, 2) all teaching the use of anchor pads for patient aids, with various ringlike friction

grooves, Stick (of record) teaching a palm grip and a hand grip (1.2) on a patient aid, and Smith (6,044,507) teaching a large, "flat" anchor pad (fig. 1) are noted.

Any inquiry concerning this communication should be directed to Alex Grosz at telephone number (703) 308-2498.

Grosz/kl
February 26, 2003

ALEXANDER GROSZ
PRIMARY EXAMINER